

We accordingly allow the Public Prosecutor's appeal against sentence in respect of the 2nd appellant, set aside the term of imprisonment for life and whipping imposed on him and substitute therefor the sentence of death.

Order accordingly.

Solicitors: *R. Rajasingam.*

**IUN CHUNG YANG & ANOR. v.
SUPERINTENDENT OF LANDS AND SURVEYS,
FIRST DIVISION, SARAWAK.**

[F.C. (Chung Min Tat F.J., Salleh Abas F.J. & Charles Ho J.)
September 3 & December 6, 1979]

[Kuching — Federal Court Civil Appeal No. 111 of 1978]

Land Law — Land Acquisition — Value of building on land — Land and building method.

In this case the High Court, in an appeal from the decision of the Superintendent of Lands and Surveys by the dissatisfied landowners whose lands had been compulsorily acquired, increased the valuation of the land but took off the valuation on the houses and crops on the land. The owners appealed to the Federal Court.

Held: a valuation should have been given to the houses on the land and in this case the order of the Superintendent giving an assessment of the value of the houses as an addition to the value of the land should be restored, subject to an increase in the land values themselves as found by the High Court.

Cases referred to:-

- (1) *Re Dhanjibhoy Bomanji* 10 Bom. L.R. 701.
- (2) *Nanyang Manufacturing Co. v. C.L.R. Johore* [1954] M.L.J. 69.
- (3) *State of Kerala v. P. P. Hassan Koya* [1968] S.C.A. 362; A.I.R. 1968 S.C. 1201.
- (4) *Vyricherla Narayana v. The Revenue Divisional Officer, Vizagapatnam* 66 I.A. 104.
- (5) *T. Adinarayana Setty v. Special L.A. Officer* A.I.R. 1954 Mysore 71.

FEDERAL COURT.

Mathew Chan for the appellants.

Peli Aron, Registrar of Land and Survey, Kuching, for the respondent.

Cur. Adv. Vult.

Chang Min Tat F.J. (delivering the judgment of the Court): The three Land References, on appeal from the decision of the Superintendent of Lands and Surveys, First Division, Sarawak by the dissatisfied landowners whose lands had been compulsorily acquired, took an unexpected turn in the High Court, at least in the case of two of them. While the valuation of the land, qua land, was slightly increased in all three cases, the awards for the value of the buildings and of the crops on Lots 41 and 52 and the value of the 2 waterborne systems on the formers, which the Government valuer had agreed to and the Superintendent had awarded, were, to the surprise not only of the landowners but also of the Government valuer, taken away. Hence the appeal of the owners of these 2 lots to this court. In the other case, Lot 38 was vacant land and the landowner was, quite understandably, not dissatisfied with the increase that he received. He therefore did not appeal. Neither

did the Superintendent. Nor did the Superintendent cross-appeal in the other two cases on the valuation on the land itself placed by the learned judge who sat with 2 assessors.

This valuation was an increase from \$150,000 per acre to \$165,000 to take account of the potentialities of the land. With respect we agree that, in the circumstances of this case, this is a proper increase to make.

The sole question at the appeal was therefore whether the learned judge was right in taking off the valuations of the houses and the crops on Lot 41. His reason for so doing was the difficulty he saw in assessing the value of the land itself. He relied on the following passage from *Re Dhanjibhoy Bomanji*⁽¹⁾:

"Land is a marketable commodity of one description, and land and buildings on it, is a marketable commodity of another and a different description and there is no known process by which from the ascertained value of land plus buildings as an investment, it is possible to deduce the value of the land alone."

This passage does not appear to be of any value for reliance.

We agree that the comparison method, that is the method of taking recent *bona fide* sales of land in the vicinity possessing similar or near similar characteristics, recommended in *Nanyang Manufacturing Co. v. C.L.R. Johore*⁽²⁾ and since then consistently adopted by our courts at all levels, is a fair method but in applying it, it has to be borne in mind that the operative condition is "lands acquired and possessing similar advantages." It does not work when transactions of purchase of bare lands are used as the yardstick for lands with houses. Nevertheless, we do not think that difficulties of assessment absolves the court from its task of doing its duty and from adopting another method open to it to do so.

Where therefore there are no comparable transactions available that could validly be applied, the two usual methods are either the land and capitalisation method in which to the value of the land as land is added a capitalisation of the return actually received or reasonably expected to be received therefrom, as applied in *State of Kerala v. P.P. Hassan Koya*⁽³⁾ and in *Vyricherla Narayana v. The Revenue Divisional Officer, Vizagapatnam*⁽⁴⁾ or the land and building method as applied in *T. Adinarayana Setty v. Special L.A. Officer*⁽⁵⁾. In the last case, on appeal to the Supreme Court of India the judgment of the High Court was modified as regards the value of the land but not of the building on the land.

The land and building method which was employed in this case by the Superintendent and said by him to be a long standing practice was not a new one. It was approved and adopted in the High Court at Kuching by Lee Hun Hoe J. (as he then was) in Kuching Land References Nos. K.1, K.2, K.3, K.4, K.5, K.6 and K.7 of 1968.

It seems to us that the principle of at-arms transactions, viz. of taking the value which a willing vendor might reasonably expect to receive from a willing purchaser, must necessarily import a valuation being given to the house on the land, either by the method of capitalisation of return actually or which might

reasonably be expected to be received from the land and the building or by the method of addition of a reasonable assessment of the value of the house to the value of the land.

We must not however be taken as expressing a preference for one method over the other. In the case before us, we do not have the benefit of the facts and arguments which would enable the application of the capitalisation method and we are therefore in allowing the appeal from the decision of the High Court, forced to adopt the addition method.

The appeal is allowed with costs here. The order of the Superintendent is restored, substituting, however, the increases found by the High Court on the land values for his.

The High Court made no order as to the costs of the references before it. For the removal of any doubt, we order that at the High Court, each party bears its own costs.

Appeal allowed.

Solicitors: Chan, Jugah, Wan Ullok & Co.

TAN SWEE HOE CO. LTD. v. ALI HUSSAIN BROS.

[F.C. (Raja Azlan Shah C.J. (Malaya), Wan Suleiman & Salleh Abas F.J.J.) December 11, 1979]

[Johore Bahru — Federal Court Civil Appeal No. 169 of 1978]

Landlord and Tenant — Written agreement of tenancy — Oral agreement to allow tenants to occupy premises for so long as they wished on payment of tea money — Dispute as to rent — Action by landlord for possession — Tenants entitled to stay in premises as long as they wished — Whether evidence of oral agreement can be given — Evidence Act, 1950, ss. 91 & 92.

Evidence — Written agreement of tenancy — Earlier oral agreement that tenants could occupy premises for as long as they wished on payment of tea money — Whether admissible — Collateral contract — Evidence Act, 1950, ss. 91 & 92.

Contract — Written contract — Collateral oral contract — Proof of — Evidence Act, 1950, ss. 91 & 92.

In this case on the facts found by the learned trial judge the appellants had orally agreed to allow the respondents to occupy the premises for as long as they wished on payment of \$14,000 as tea money. Two written agreements of tenancy were later executed but they did not refer to the appellants' promise. A dispute arose as to payment of rent and the appellants eventually sued for vacant possession, arrears of rent, mesne profits and damages. In their defence the respondents claimed that under the oral agreement they were entitled to stay in the premises as long as they wished and so long as they paid the rent regularly. The learned trial judge dismissed the appellant's claim and ordered the appellants to register a lease in favour of the respondents for 28 years. He assessed the rent at \$293.40 per month in the light of the increase of assessment. The appellants appealed and the question that arose was whether the evidence of the oral promise could be given in view of sections 91 and 92 of the Evidence Act.

Held: (1) an oral promise, given at the time of contracting which induces a party to enter into a contract overrides any inconsistent written agreement. The device of collateral contract does not offend the extrinsic evidence rule because the oral promise is not imported into the main agreement. Instead it constitutes a separate contract which exists side by side with the main agreement;

(2) in this case the learned trial judge was correct in giving effect to the oral agreement and in interpreting it to

A give the respondents a lease of 28 years from the date of the agreement.

Cases referred to:-

- (1) *Siew Soon Wah v. Yong Tong Hong* [1973] 1 M.L.J. 133.
- (2) *Heilbut Symons & Co. v. Buckleton* [1913] A.C. 30, 47.
- (3) *City and Westminster Properties (1934) Ltd. v. Mudd* [1959] Ch. 129.
- (4) *Dick Bentley Productions Ltd. v. Harold Smith (Motors) Ltd.* [1965] 2 All E.R. 65, 67.
- (5) *Mendelssohn v. Normand Ltd.* [1970] 1 Q.B. 177.
- (6) *J. Evans & Son v. Andrea Merzario* [1976] 2 All E.R. 930.
- (7) *Brikom Investments Ltd. v. Carr* [1979] 2 All E.R. 753.
- (8) *De Lassalle v. Guildford* [1901] 2 K.B. 215, 222.

G The following cases were also cited in argument:- *Kingswood Estate Co. Ltd. v. Anderson* [1963] 2 Q.B. 169, 179; *Wakeham v. Mackenzie* [1968] 2 All E.R. 783; *Chalmers v. Pardoe* [1963] 3 All E.R. 552, 556; *Kepong Prospecting Ltd. & Ors. v. Schmidt* [1968] 1 M.L.J. 170, 175 H, E & F; *L. Schuler A G v. Wickman Machine Tool Sales Ltd.* [1973] 2 All E.R. 39, 53, 55, 59, 60; *Ho Ying Chye v. Teh Cheong Huat* [1965] 2 M.L.J. 261; *Lee Ah Low v. Cheong Lep Keen & Anor.* [1970] 1 M.L.J. 7, 9; *Parker v. Taswell* 44 E.R. 1106, 1110, 1111, 1113; *Leong Gan & Ors. v. Tan Chong Motor Co. Ltd.* [1969] 2 M.L.J. 8; *Foo Tock Lin v. Piong Kew* [1963] M.L.J. 67; *Ariff v. Rai Jadunath Majumdar Bahadur* (1931) 47 T.L.R. 238, 239 (P.C.).

FEDERAL COURT.

E *Thara Singh Sidhu* for the appellants.
S.V.K. Singham for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah C.J. (Malaya) (delivering the judgment of the Court): The appellants orally agreed to allow the respondents to occupy their premises for so long as they wished on payment of tea-money. **F** Two written agreements were later executed, but did not refer to the appellants' promise. Sections 91 and 92 of the Evidence Act state that extrinsic evidence is not admissible to vary, add to or contradict the terms of a written agreement. Can the respondents enforce the promise in the light of the two sections of the Evidence Act? The learned judge answered in the affirmative. That sums up the question raised in the instant appeal.

G The facts are as follows: In 1957 the respondents were looking for premises in Kluang, Johore, to carry on the business of an eating shop. They found one at No. 11, Jalan Dato Teoh Siew Khor belonging to the appellants. But the premises was not suitable for their purpose as it was designed as a bank. **H** Negotiation commenced with the appellants. The appellants wanted \$14,000 tea-money to allow the respondents to occupy the premises. A reduction in the amount of tea-money was offered but rejected. As a result an oral agreement was reached between the parties whereby the respondents were to rent the said premises on payment of \$14,000 tea-money and they could stay there for as long as they wished provided they paid rent regularly. Relying on that oral assurance the respondents went into occupation. They paid the tea-money and received the first month's receipt at the back of which were recited seven conditions, viz: no sub-letting without the appellants' consent, no contraband goods to be stored in the premises,